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EXAMINER

LEE, JUSTIN YE

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/397,300
Filing Date: September 15, 1999
Appellant(s): VALO ET AL.

MAILED

SEP 29 2006

Technology Center 2600

Joseph V. Gamberdell, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/6/04 appealing from the Office action
mailed 11/12/03.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially incorrect. Claims 12, 15, and 17 should be rejected under 35 USC 102(e), not 102(b) as stated by the appellant.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6044067

Suzuki

08-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 12 and 15** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. **Claim 12** recites the limitation "in data terminal equipment" in line 7. There is insufficient antecedent basis for this limitation in the claim.

The claim describes "a network element and "a mobile terminal". However, later recites "flow control in data terminal equipment" (emphasis added). It is not clear what "equipment" is being referred by the expression "in data terminal equipment". The claim will be treated on the merits as best understood.

4. **Claim 15** has the same problem as claim 12 explained above. The claim will be treated on the merits as best understood.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371 © of this title before the invention thereof by the applicant for patent.

6. **Claims 12, 15 and 17** are rejected under 35 U.S.C. 102(e) as being anticipated by Snowden et al. (US Patent Number 5,974,032).

Regarding **claim 12, 15 and 17**, Snowden et al. discloses a method and apparatus for adjusting a data rate in a communication system. The system includes call receivers 2 (mobile terminal) and satellites 1 (network element) for exchanging a plurality of data units (block 420) with the call receivers, as exhibited in Figures 1 and 6-7. At least one data unit includes a bit rate indicator 460 (status bit) which is analyzed by the call receivers 2 (mobile terminal) to determine a change or adjustment in the data rate used to exchange the data units; see column 9, lines 24-67.

Circuitry for providing (e.g. controller 76, Figure 5) the data unit that includes the bit rate indicator 460 (status bit) as well as circuitry for analyzing (e.g. processor 39, Figure 3) the status bit is included; see e.g. Figures 8-9, and the abstract. (See also column 5, lines 28-30 and column 9, line 66 to column 10, line 4).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35-U.S.C 1.03(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 13-14, 16 and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Snowden et al. (US Patent Number 5,974,032) in view of Suzuki (US Patent Number 6,044,067).

Regarding claims 13-14, 16 and 18, Snowden et al. discloses everything claimed as applied above (see claims 12 and 15). In addition, it is the call receiver 2 (mobile terminal) who analyzes the bit rate indicator 460 (status bit) to determine a change or adjustment in the data rate used to exchange the data units; see step 950, Figure 9.

However, Snowden et al. fails to specify that the data rate is changed by changing the number of time slots, and that it is the mobile terminal who request such change.

As illustrated by Suzuki these are well known features for TDMA systems. Suzuki teaches that the data transmission rate between a base station (e.g. Snowden et al.'s satellite 1) and a mobile station/terminal (e.g. Snowden et al.'s call receiver 2) is changed by modifying the number of time slots used; see column 4, lines 40-58. The request may be originated at the mobile terminal, see column 17, lines 45-60.

Therefore, it would have been obvious at the time the invention was made to change the data rate by changing the number of time slots and originating the change request at Snowden et al.'s mobile terminal because the system is TDMA.

(10) Response to Argument

Regarding the Snowden reference, appellant states, "Snowden's indication of which bit rate is used in the remainder of a simplex time slot is not a status bit indicating flow control."	In contrast to appellant's assertions, an optimum bit rate indicator 460 is used to select one of two bit rates (25000 or 50000 bits per second) in order to improve the delivery reliability (col. 12, lines 17-21 and col. 16, lines 37-39). In col. 17, lines 49-52 and col. 18, lines 50-62, Snowden further discloses that the optimum bit rate indicator 460 selects one of the two bit rates mentioned above for optimizing the throughput. When the throughput is optimized, a maximum amount of data is communicated (thus flow control) and when the throughput is not optimized the system is not communicating at the maximum rate. Therefore, a flow control occurs when a system purposely adjusts
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	to communicate at an optimum throughput in accordance with the optimum bit rate indicator 460.
Regarding the Snowden reference, appellant further states, "Snowden fails to disclose or suggest analyzing the status bit and requesting a change in a data rate".	In contrast to appellant's assertions, the optimum bit rate indicator 460 is used for adjusting the bit rate to an optimum throughput and optimum throughput occurs when the bit rate is adjusted to one of the two bit rates (25000 or 50000 bits per second) (col. 12, lines 17-21 and col. 16, lines 37-39 and col. 17, lines 49-52 and col. 18, lines 50-62). Therefore, the status bit is analyzed and used to change the data rate.
Regarding appellant's argument, appellant states, "a flow control process where DTE is prevented from sending data when flow control is active and resume sending data when flow control is in active".	In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a flow control process where DTE is prevented from sending data when flow control is active and resume sending data when flow control is in

	<p>active) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See <i>In re Van Geuns</i>, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).</p>
<p>Regarding the Snowden reference, appellant further states, "Snowden's optimum bit rate indicator is not the same thing as the status bit of the present invention".</p>	<p>In contrast to appellant's assertions, the optimum bit rate indicator is used to control the throughput of data communication between the satellite and the mobile terminal (col. 16, lines 37-39 and col. 17, lines 49-52 and col. 18, lines 50-62), which is the same as the appellant's status bit i.e. controlling the flow control of the communication of a network element and a mobile terminal in accordance with the bit rate indicator.</p>
<p>Regarding the Snowden reference, appellant further states, "a data rate used to exchange a plurality of data units</p>	<p>In contrast to appellant's assertions, the throughput of the communication is optimized due to the receiving and</p>

<p>between a network element and a mobile terminal is not changed, adjusted or controlled by analyzing the bit rate at which demodulation is performed by demodulator 37".</p>	<p>analyzing the optimum bit rate indicator and changing of the communication devices' function and communication rate therefore, the data rate is changed (col. 16, lines 37-39 and col. 17, lines 49-52 and col. 18, lines 50-62, again the optimum bit rate indicator is not used only to change the demodulator 37. It also is used to change the data throughput of the communication).</p>
<p>Regarding to appellant's arguments on rejections on claim 15, appellant states, "Snowden fails to disclose circuitry for providing at least one data unit that includes a status bit indicating that flow control is active or inactive and Snowden fails to disclose or suggest analyzing the status bit and requesting a change in a data rate".</p>	<p>In response to appellant's arguments to claim 15, arguments on claim 15 are similar to all of the above arguments, therefore please see the above responses for detail.</p>

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

(12) Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Justin Lee

Patent examiner

Art Unit 2617

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